

The Applicants originally submitted Claims 1-20 in the application. Presently, the Applicants have neither amended, canceled nor added any claims. Accordingly, Claims 1-20 are currently pending in the application.

I. Non-Statutory Provisional Double Patenting Rejection of Claims 1-26

The Examiner has provisionally rejected Claims 1-20 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-8 of U.S. Patent No. 6,437,372. With this response the Applicants have submitted a terminal disclaimer to obviate the double patenting rejection over the prior patent. Therefore, the Applicants respectfully request the Examiner to withdraw the obviousness-type double patenting rejection to Claims 1-20.

II. Rejection of Claims 1-20 under 35 U.S.C. §112

The Examiner has rejected Claims 1-20 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. More specifically, the Examiner is rejecting Claims 1-20 as lacking structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. The Applicants strongly disagree that the requisite structural cooperative relationships are lacking. If the Examiner continues to believe that these structural cooperative relationships are lacking, the Applicants kindly request the Examiner give the attorney of record (Mr. Greg Parker) a call to discuss this issue.

III. Rejection of Claims 1 and 11 under 35 U.S.C. §102

The Examiner has rejected Claims 1 and 11 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,801,404 to Kahan, *et al.* ("Kahan"). Presently, independent Claims 1 and 11 include the element that a dopant barrier is located between a doped layer and a different layer, wherein the dopant barrier includes at least two layers and does not form a pn junction with the doped layer. Kahan fails to teach or suggest this element.

Kahan, in direct contrast to the present invention, is directed to high efficiency, aluminum gallium arsenide LED arrays utilizing zinc-stop diffusion layers. (Title) Kahan teaches that a substrate 317 may have an n-AlGaAs layer 316 formed there over. Kahan then teaches that an AlGaAs active layer 315 may be formed over the layer 316 and that a Zn stop diffusion layer 314 may be formed over the active layer 315. Over the Zn stop diffusion layer 314 is formed a p-AlGaAs layer 313.

The Examiner's rejection is faulty for a number of reasons. First, what the Examiner asserts is a dopant barrier on Page 4 of the May 22, 2003, official action is actually an AlGaAs active layer 315. Thus, the layer 315 is not a dopant barrier layer as the Examiner asserts, but an active layer. Notwithstanding, whether the Examiner is referring to the layer 315 or the layer 314 as the barrier layer taught by Kahan, neither of these individual layers comprises at least two layers as required by the independent claims of the present invention.

Therefore, Kahan does not disclose each and every element of the claimed invention and as such, is not an anticipating reference. Accordingly, the Applicants respectfully request the Examiner to withdraw the §102 rejection with respect to Claims 1 and 11.

IV. Applicability of 35 U.S.C. §103(c)

The present application and U.S. Patent No. 6,240,114 to Anselm, *et al.* ("Anselm") were, at the time this invention was made, owned by the same person (Agere Systems Optoelectronics Guardian Corp). Anselm qualifies as prior art only under one or more subsections (e), (f), and (g) of 35 U.S.C. §102. Specifically, Anselm qualifies as prior art under §102(e) as the present invention was filed before Anselm issued. Therefore, under the 35 U.S.C. §103(c) provision Anselm is not prior art and shall not preclude patentability. Thus, Anselm is not a proper prior art reference.

V. Rejection of Claims 2-10 and 12-20 under 35 U.S.C. §103

The Examiner has rejected Claims 2-10 and 12-20 under 35 U.S.C. §103(a) as being unpatentable over Kahlen in view of Anselm. As established directly above, Anselm is not a proper prior art reference. As also established above, Kahlen alone fails to teach each and every element of independent Claims 1 and 11. More specifically, Kahlen fails to teach the element that a dopant barrier is located between a doped layer and a different layer, wherein the dopant barrier includes at least two layers and does not form a pn junction with the doped layer. Similarly, Kahlen fails to suggest such an element.

Therefore, Kahlen fails to teach or suggest the invention recited in independent Claims 1 and 11 and their dependent claims, when considered as a whole, and therefore fails to establish a *prima facie* case of obviousness. Claims 2-10 and 12-20 are therefore not obvious in view of Kahlen.

In view of the foregoing remarks, the cited references do not support the Examiner's rejection of Claims 2-10 and 12-20 under 35 U.S.C. §103(a). The Applicants therefore respectfully

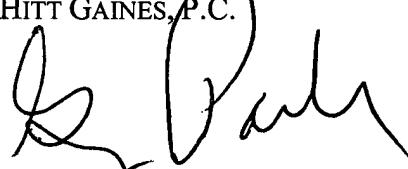
request the Examiner withdraw the rejection.

VI. Conclusion

In view of the foregoing remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicits a Notice of Allowance for Claims 1-20.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application.

Respectfully submitted,
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